

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS**

State of Minnesota, by
Dolores Fridge, Commissioner,
Department of Human Rights,

Complainant,

vs.

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ORDER

Tim McPherson and Katherine
McPherson d/b/a Continental
Telemarketing,

Respondents.

The Commissioner of Human Rights began this proceeding by issuing a Notice of and Order for Hearing, along with a Complaint, on January 13, 1998. That Notice scheduled a hearing on the matters raised by the Commissioner's Complaint for May 5, 1998, at 9:30 a.m. before Administrative Law Judge Bruce H. Johnson at the Office of Administrative Hearings, 100 Washington Square Building (Washington Avenue South), Suite 1700, Minneapolis, Minnesota.

After the Department encountered difficulties in its attempts to serve Mr. and Mrs. McPherson by mail, the Washington County Sheriff's Office was able to personally serve them with the Notice of and Order for Hearing and the Complaint on March 10, 1998. After being served, Mr. and Mrs. McPherson did not file a Notice of Appearance, file an Answer to the Department's Complaint, or appear at the May 5, 1998, hearing, as the Notice of and Order for Hearing had instructed them to do. All of these failures violated the Office of Administrative Hearings' rules.^[1]

The Department did appear at the hearing on May 5, 1998. Based on the McPhersons' violations of the rules, particularly their failure to appear at the hearing, the Administrative Law Judge found them to be in default. When a party is in default, an administrative law judge may accept the allegations in the Complaint as being true and no longer in dispute without further proof.^[2] At the hearing, the undersigned Administrative Law Judge did take the allegations in the Department's Complaint as being true and no longer in dispute because Mr. and Mrs. McPherson were in default. The Administrative Law Judge then proceeded to receive evidence on how much to

assess the McPhersons in damages. At the Department's request, the Administrative Law Judge kept the hearing record open until May 26, 1998, to receive further evidence on the issue of damages.

The Department submitted its supplemental evidence on damages on May 26, 1998. The Department served that information by mail on Mr. and Mrs. McPherson on May 27, 1998. On that same day, Mr. McPherson, acting on behalf of himself and his wife, sent a letter to the Administrative Law Judge essentially asking him to consider their failure to participate in this proceeding and to appear at the hearing excusable. They went on to request an opportunity to be heard on the merits of the Department's Complaint.

The Administrative Law Judge is not yet prepared to allow Mr. and Mrs. McPherson to re-open the evidentiary record. He will, however, treat their letter as a motion to reconsider his finding that the allegations in the Department's Complaint are true and no longer in dispute because of their default. He will also schedule a hearing to hear arguments about whether he should reconsider his earlier findings and conclusions.

In view of what has occurred,

IT IS HEREBY ORDERED that the parties appear at 9:30 p.m. on Wednesday, June 24, 1998, at the Office of Administrative Hearings, 100 Washington Square Building (Washington Avenue South), Suite 1700, Minneapolis, Minnesota, for the hearing on Mr. and Mrs. McPherson's motion for reconsideration.

Dated this 2nd day of June, 1998.

BRUCE H. JOHNSON
Administrative Law Judge

^[1] Minnesota Rules, part 1400.6000 (1997).

^[2] Id.